

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.18106 of 2012

and

M.P.No.1 of 2012, W.M.P.No.13367 of 2017

Jeevan Thampi

.. Petitioner

Vs.

- 1.The Government of Puducherry,
Represented by its Chief Secretary,
Chief Secretariat, Beach Road,
Puducherry - 605 001.
- 2.The Secretary-Health,
Chief Secretariat, Beach Road,
Government of Puducherry,
Puducherry - 605 001.
- 3.Mission Director in charge,
Puducherry State Health Mission,
National Rural Health Mission,
Old GH Complex, Puducherry - 605 001.
- 4.Mission Director (In-Charge) and
Deputy Director (Public Health),
Government of Puducherry,
Puducherry State Health Mission,
Old GH Complex, Puducherry - 605 001.
- 5.Director - Health,
Directorate of Health and Family Welfare,
Government of Puducherry,
Saram, Pondicherry - 605 003.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to order No.2823/PSHS/E1/2012-13/61, dated 19.04.2012, passed by the 4th Respondent and quash the same and direct the Respondents to grant the Petitioner enhanced honorarium at Rs.40,320/- w.e.f. 01.04.2009 and bonus at Rs.3,500/- for the financial year 2009-2010, and pay the sum due with interest at 18% per annum, with all consequential benefits, including arrears of pay and allowances.

For Petitioner : Ms.Y.Kavitha
for M/s.P.V.S.Giridhar and Sai

For Respondents : Mr.Stalin Abhimanyu
Government Advocate (Pondy)

O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the 4th respondent dated 19.04.2012 bearing No.2823/PSHS/E1/2012-13/61 and for a direction to the Respondents to grant him enhanced honorarium at Rs.40,320/- w.e.f. 01.04.2009 and bonus at Rs.3,500/- for the financial year 2009-2010, together with interest at 18% per annum, with all consequential benefits, including arrears of pay and allowances.

2.The petitioner was appointed as Consultant - (Finance and Personnel) by the Pondicherry Health and Family Welfare Society for Voluntary Sector (hereinafter referred as "SCOVA") on 30.10.2000. In the year 2005, all the health related Societies were merged under the National Rural Health Mission into a common Society styled as Puducherry State Health Society (PSHS), under the Puducherry State Health Mission (PSHM), Government of Puducherry. The petitioner as a Consultant was a member of Committee constituted for the said purpose. The petitioner was incharge of various programmes and he was discharging his duties with sincerity and dedication. His performance was remarked as very good from the year 2000-2001. One Dr.Mrs.Vijaya Balakandan, the then Mission Director did not like the suggestion made by the petitioner and developed an inimical attitude towards the petitioner. However, the former Mission Director Dr.D.Thamma Rao appreciated the suggestions and advice given by the petitioner. Due to the inimical attitude, the said Dr.Mrs.Vijaya Balakandan, the then Mission Director issued an Office Order dated 20.04.2009 re-designating the petitioner as Consultant Finance, which is contrary to the terms of the appointment and the guidelines of the Rural Health Mission. The petitioner made various representations to the second respondent.

3.Meanwhile, the honorarium paid to the petitioner as Consultant-(Finance and Personnel) was enhanced to Rs.40,320/- with effect from 01.04.2009. The same has been approved by all the Authorities. The petitioner sent representations dated 28.09.2009 and 23.11.2009 seeking enhancement of honorarium, but the same was not enhanced. By the order dated 09.01.2010, the then Mission Director Dr.Mrs.Vijaya Balakandan in her capacity as the Director, Mission Direct incharge, rejected the request of the petitioner for enhancing the honorarium citing the performance report of the petitioner, which over the years were

very good in nature. The learned counsel appearing for the petitioner further contended that in fact the enhancement of honorarium is not based upon the performance as stated by her. In any case, the petitioner had good record of performance and enhancement is with effect from April 2009. The petitioner's ACRs from 2000-2001 and till the period 2008-2009 and previous years were very good and no adverse of CRs or remarks were ever communicated to the petitioner. The denial of honorarium is illegal and tainted with mala fides.

4.While so, the fourth respondent by his letter dated 03.04.2010 stated that petitioner was appointed as Consultant-Finance (IDSP) on a monthly honorarium of Rs.15,400/- for a particular project, which programme is scheduled to cease in June 2010. Thereafter, instead of getting an enhanced honorarium of Rs.40,320/-, reduced honorarium of Rs.15,400/- was given to the petitioner. The petitioner was forced to sign the agreement, since he had no other source of income and made representation. His Junior K.Dinesh Kumar, who was working as Consultant on honorarium of Rs.10,000/- was appointed in the place of petitioner and paid a sum of Rs.32,000/-. The action of the respondents in reducing the rank of the petitioner to the post of Consultant (IDSP) and reducing the honorarium is arbitrary, unreasonable and violative of guidelines issued by the National Rural Health Mission (NRHM). The then Mission Director without following any rules or procedures, broke all norms and simply reversed the post of the Senior with that of the junior in position as well as salary. The said action of the respondents is tainted with mala fide as then Mission Director Dr.Mrs.Vijaya Balakandan had developed a personal animosity against the petitioner merely because he pointed out her mistakes and also he performed his duties and responsibilities in an honest and objective manner.

5.The petitioner filed W.P.No.9701 of 2010 challenging the orders dated 09.01.2010 and 03.04.2010 passed by the third respondent and for a direction to the respondents 1 and 2 to restore the petitioner to the post of Consultant (Finance & Personnel) with all consequential benefits including payment of honorarium of Rs.40,320/- per month with effect from 01.04.2009. Pending Writ Petition, the respondents extended the services of the petitioner up to 31.03.2011 and honorarium was fixed at Rs.32,000/- and the same was paid from 01.04.2010 to 13.07.2010. This Court by the order dated 30.06.2010 disposed off the Writ Petition with a liberty to the petitioner to agitate his grievance with regard to honorarium and other grievances.

6.The petitioner submitted his representation dated 05.07.2010 seeking payment of honorarium of Rs.40,320/- from April 2009 and sought for payment of arrears of honorarium. The petitioner also submitted his resignation on 05.07.2010, which was duly accepted. No order was passed on the petitioner's

representation. The petitioner filed W.P.No.8812 of 2012 for a direction to the respondents to grant enhanced honorarium of Rs.40,320/- with effect from 01.04.2009 and bonus at Rs.3,500/- for the Financial Year 2009-2010 and pay the sum due together with interest at the rate of 18% per annum with all consequential benefits including arrears of pay and allowances. While the said Writ Petition was pending, the fourth respondent has passed the impugned order dated 19.04.2012 rejecting the petitioner's representations. Subsequent to the rejection, by the order dated 06.06.2012, W.P.No.8812 of 2012 was dismissed with liberty to the petitioner to file a fresh Writ Petition. Challenging the impugned order dated 19.04.2012, the petitioner has come out with the present Writ Petition.

7.The learned counsel appearing for the petitioner contended that payment of honorarium is not based on the performance of the petitioner. On the other hand, the Authorities have enhanced honorarium with approval of Rs.40,320/- from April 2009. Only because of the inimical attitude of the then Mission Director Dr.Mrs.Vijaya Balakandan, the honorarium of Rs.40,320/- was not paid to the petitioner. The performance of the petitioner throughout his carrier record is very good. The impugned order was passed on extraneous consideration of colourable exercise of power. The mala fide intention of the respondents is clearly seen as the petitioner was reduced to a lower rank to the post of Consultant (IDSP) with less honorarium and his junior was appointed in his place. Only after the petitioner filed Writ Petition, the respondents restored the petitioner to the rank of Consultant - (Finance and Personnel) and paid honorarium of Rs.32,000/-. As per the proceedings, the petitioner is entitled to honorarium of Rs.40,320/- from April 2009. Till his resignation on July 2010, the petitioner is entitled to arrears of honorarium and prayed for allowing the Writ Petition.

8.The fifth respondent filed counter affidavit on his behalf and on behalf of respondents 1 to 4. Mr.Stalin Abhimanyu, learned Government Advocate (Pondy) appearing for the respondents contended that the enhancement of honorarium is only based on the performance of the employee like petitioner. It is not based on the order of the Committee. The performance of the petitioner was not up to the mark and therefore he was not entitled to payment of enhanced honorarium of Rs.40,320/-. Due to the circumstances and need of the Society, the petitioner was appointed to the post of Consultant - (Finance and Personnel) for a particular project. The petitioner without any objection, accepted the order and signed the contract. Having accepted the contract, it is not open to the petitioner to claim enhanced honorarium of Rs.40,320/-. Subsequently, the honorarium of the petitioner was enhanced to Rs.32,000/- and petitioner is not entitled to honorarium of Rs.40,320/-. The contract period for

the Financial Year 2009-2010 entered by the petitioner was ended on 31.03.2010. Due to the poor performance of the petitioner, the Principal Secretary (Health)/Chairman, Director (Health)/Vice-Chairman, Executive Committee and Mission Director has decided not to renew the contract of the petitioner as Consultant (Finance)-RCH as the same required better Financial Management and reporting to the Government of India. However, on humanitarian grounds, decision was taken to accommodate the petitioner to the post of Consultant (Finance) in Integrated Disease Surveillance Programme (IDSP) at a monthly honorarium of Rs.15,400/-. As far as the contention of the learned counsel for the petitioner that the appointment of his Junior K.Dinesh Kumar is concerned, the said K.Dinesh Kumar has fulfilled the Terms of Reference (TOR) for the post of Consultant (Finance)-RCH, he had eight and half years experience as on 01.04.2010 and his performance was good. The allegation of mala fide on the then Mission Director Dr.Mrs.Vijaya Balakandan is baseless. The reason given in the impugned order is valid and prayed for dismissal of the Writ Petition.

9.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Pondy) appearing for the respondents and perused the entire materials on record.

10.The issue to be decided in the Writ Petition is whether the payment of honorarium of Rs.40,320/- is based on the performance of contractual employee like petitioner. From the materials on record, it is seen that the Committee has enhanced the honorarium to Rs.40,320/- per month and the same has been approved by the competent Authority. There is no condition imposed in the payment of honorarium of Rs.40,320/-. There is nothing on record to show that payment of honorarium of Rs.40,320/- is based only on the performance of the petitioner. The learned counsel appearing for the petitioner contended that the petitioner discharges his duties sincerely with dedication and his performances were rated as very good throughout his carrier. There is no adverse remarks against the petitioner and he has performed his duties without any blemish. The respondents have not furnished any particular to show that performance of the petitioner was not good and there were adverse remarks with regard to his work from the year 2000. Except stating that the performance of the petitioner was not good, the respondents have not substantiated the said contention. In view of the above materials, the reasons given by the fourth respondent in the impugned order for rejecting the claim of the petitioner for payment of Rs.40,320/- per month as honorarium and for arrears of honorarium are not valid and legal and without any basis.

11.In the result, the impugned order of the fourth respondent is quashed and the Writ Petition is allowed. The petitioner is entitled to honorarium of Rs.40,320/- from April 2009 till his resignation on 05.07.2010. The respondents are

directed to pay the arrears of honorarium within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Secretary,
The Government of Puducherry,
Chief Secretariat, Beach Road,
Puducherry - 605 001.
2. The Secretary-Health,
Chief Secretariat, Beach Road,
Government of Puducherry,
Puducherry - 605 001.
3. Mission Director in charge,
Puducherry State Health Mission,
National Rural Health Mission,
Old GH Complex, Puducherry - 605 001.
4. Mission Director (In-Charge) and
Deputy Director (Public Health),
Government of Puducherry,
Puducherry State Health Mission,
Old GH Complex, Puducherry - 605 001.
5. Director - Health,
Directorate of Health and Family Welfare,
Government of Puducherry,
Saram, Pondicherry - 605 003.

+1cc to Mr. Giridhar and Sai, Advocate, S.R.No. 72811
+1cc to the Government Pleader cum Public Prosecutor
(Pondicherry), S.R.No. 73118

W.P.No.18106 of 2012

EV(CO)
GN(09/10/2019)